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2000s

The Gavel

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11-2003

2003 Vol. 52 No. 3

Cleveland-Marshall College of Law

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#### Recommended Citation

Cleveland-Marshall College of Law, "2003 Vol. 52 No. 3" (2003). 2000s. 18.  
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## Download on a Dilemma



Filesharing remains a highly debated issue, both in public opinion and in the courts. The Gavel breaks down the pros and cons of downloading files. **LAW, PAGE 2**

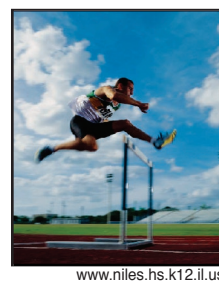
## Starting with a Full Plate

Adjunct Prof. Peter Traska, '02, is a rookie husband, father, professor and employee. Now a voice of experience, he shares his thoughts and offers advice. **CAREER, PAGE 4**



## Clearing the Tier Four Hurdle

Law school rankings are constantly under fire as "inherently flawed." The Gavel explores ways to manipulate those flaws to C-M's advantage. **OPINION, PAGE 6**



# THE GAVEL

VOLUME 52, ISSUE 3 NOVEMBER 2003

THE STUDENT NEWSPAPER AT CLEVELAND-MARSHALL COLLEGE OF LAW

## CSU detected in the docket

By Eric Doeh

STAFF WRITER

In 1998, CSU, in an attempt to upgrade and integrate into one system for student registration, financial aid and student accounts, purchased computer software from California based PeopleSoft. CSU was one of the first universities to use PeopleSoft software to keep track of student's academic and financial information. When CSU began using PeopleSoft products, problems arose, ranging from difficulties with registering for classes to the financial aid office being unable to process financial aid awards.

A 1998 audit, conducted by Price-Waterhouse Coopers, revealed that \$1.6 million in student accounts had not been collected. The audit indicated PeopleSoft software did not generate a report of uncollected accounts to allow CSU to collect on these accounts. Furthermore, the report indicated that because of late billings, the university had another \$1.6 mil-

See **LAWSUIT**, page 5



### Dr. Phil tells Cleveland to "Get Real"

Dr. Phil McGraw stopped at the CSU Convocation Center during his "Get Real" tour Nov. 7. He emphasized the importance of reaching one's "authentic self."

The talkshow host disclosed his ten "Laws of Life" and his three-tiered model for assessing how any person became the in-

dividual he is today.

Dr. Phil gave his two-step formula for a successful relationship. He also discussed his research of thousands of case studies of "successful" people, and pulled out the trends common to all of them.

Turn to page 3 for more.

## Bar passage rate remains stagnant

By Jason Smith

MANAGING EDITOR

After the release of the July 2003 bar examination results, the Cleveland-Marshall administration is looking at passage rate trends hoping to come up with solutions to improve C-M's numbers.

C-M, with a 75 percent first time pass rate and a 65 percent overall pass rate, ranked seventh among the nine Ohio law schools. While C-M's first time pass rate has increased almost ten percent since 1997, certain trends are concerning C-M administrators.

A particular area of concern is the discrepancy between full-time and part-time students' passage rates. Since 1997, full-time students have been consistently improving, while part-time students have not mirrored this trend. Over the past seven years, full-time students have outperformed part-time students by almost ten percent.

Jack Guttenberg, associate

dean, said that, although there is no definite explanation for the discrepancy, it is likely due to the time constraints part-time students face. Guttenberg said, "Part-time students have significant responsibilities, including family and jobs."

Guttenberg indicated this explanation makes sense and pointed to the fact that entering part-time students have higher undergraduate GPAs and LSAT scores than full-time students. In addition, part-time students pass the bar at a lower rate than full-time students with similar law school GPA's, said Guttenberg.

To try to remedy this discrepancy, C-M's administration and faculty are publicizing the problem. In an evening corporations class, Prof. Veronica Dougherty told her students about the importance of spending a significant amount of time preparing for the bar. Dougherty added that part-

See **RESULTS**, page 4



## July 2003 Bar Passage Rates

C-M's July 2003 Bar Exam passage rates

Overall	65%
First Time:	75%
Repeat Takers:	33%

The Ohio State University scored the overall highest pass rate at 87 percent and the highest first time pass rate at 92 percent. Case Western Reserve University's overall pass rate was 82 percent with an 85 percent first time pass rate.

Ranking below C-M were Capital University and Ohio Northern University, with overall passage rates of 54 and 61 percent, respectively.

## Professor Hoke suggests remedies for overworked American professionals

By Dane Macaskill

Today, Americans work, on average, nine weeks longer per year for the same standard of living enjoyed by citizens of most European countries. Attorneys rank among the professionals with the most demanding schedules, averaging between 70 and 80 hours per week.

In a presentation particularly pertinent for a body of students primed to enter one of the most demanding professions currently dominating the American employment spectrum, Prof. Candace Hoke spoke in the second of C-M's 2003-2004 Faculty Speaker Series on the American tension between work and family.

Hoke identified the problem of overwork as one that takes a tragic toll on the social viability of the

family. The inability of Americans to juggle the increasingly burdensome responsibilities of employment, while simultaneously raising happy and healthy families is a problem that is rapidly reaching crisis proportions, as she sees it.

Although Hoke cites many contributing reasons for the prevalence of the overwork syndrome, including high unemployment, pervasive work reallocation and mandatory overtime, the most compelling, and arguably the reason most directly under our control, relates to American norms about what employers have a right to expect from employees.

According to Hoke, Americans view the ideal worker as someone who gives top, or even sole priority to the demands of the job. Such a person is prepared to work

unlimited overtime, to agree to unlimited travel requirements and to relocate wherever and whenever it is required of him or her. Not only does this ideal present a problem for people who place family among their top priorities, it presents a problem for Americans who assign any priority whatsoever to their family.

Hoke offers the obvious solution: Americans should work less. Her strategies for achieving this end are multifold. First, she argues that Americans should reject the norm of mandatory overtime. This means taking a closer look at the Fair Labor Standards Act and making adjustments that reflect the needs of working Americans. Under the Act, as it currently exists, most employees can be exempt

See **OVERWORKED**, PAGE 5



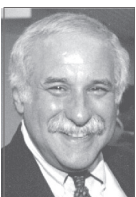
## C-M: The judges' law school

By Steven H. Steinglass

The Hon. George W. White, a 1955 alumnus and the first African American to serve as Chief Judge of the United States District Court for the Northern District of Ohio, remarked that C-M was "the law school of judges." He had good reason to make that claim.

In fact, Ohio history is indebted to our law school for a series of judicial "firsts." In 1923, three years after the emancipation of women, Mary Grossman, the daughter of Hungarian immigrants and a 1912 graduate of our law school, became the first woman in America ever elected to a municipal court.

Sixteen years later, President Coolidge named Genevieve Cline



### The Dean's Column

to the United States Customs Court in New York City. A graduate of the class of 1921, Judge Cline was the first woman in America ever appointed to a federal bench. Several years later, Ohio Governor James Rhodes appointed our 1951 alumna Lillian W. Burke to the Cleveland Municipal Court, making her the first black woman judge in Ohio.

Presently, three of the seven justices on the Ohio Supreme Court are C-M graduates; the Hon. Francis E. Sweeney, '63; our Justice-in-Residence, Hon. Maureen O'Connor, '80, and the Hon. Terrence O'Donnell, '71.

Perhaps our first male district court judge was 1918 alumnus, the Hon. James C. Connell, whom President Eisenhower appointed to the court in 1954. Prior to Judge White, the Hon. Thomas D. Lambros, '52, also served as the Chief Judge of the United States District Court for the Northern District of Ohio.

Today, five C-M graduates serve on the United States District Court for the Northern District of Ohio. And let us not forget that the new federal courthouse, is named for our graduate, the Hon. Carl B. Stokes, '53.

C-M graduates represent a majority of the county and municipal courts as well. For example, of the 12 seats on the Ohio Eighth District Court of Appeals, ten learned law at C-M. The numbers on the county courts are equally astounding: 23 of the 33 judges on the Cuyahoga County Court of Common Pleas – General Division, four of the five judges on the Cuyahoga County Court of Domestic Relations, four of the six judges on the Cuyahoga County Juvenile Court bench and both judges on the Cuyahoga County Probate Court are our graduates.

In short, this is a fortunate law school, and I look forward to seeing how many of the men and women studying law here now will greet us one day from the state and federal benches of our country.

## Striking a delicate balance

*File sharing provokes debate on matters of conscience and economy*

By Michael Luby

STAFF WRITER

*This is the first in a continuing series addressing the issues surrounding the surge in Internet file sharing and its effects on the entertainment industry.*

In 1984, President and Chief Executive of the Motion Picture Association of America, Jack Valenti said, "the VCR is to the American film industry what the Boston strangler is to a woman alone." Today VCR's account for 40 percent of the total industry revenues.

"Technology in the end always wins," said Michael Weiss. Weiss, chief executive of Morpheus.com knows. He was challenged for opening one of the first video rental stores in the 1970's.

The Recording Industry Association of America (RIAA) is currently in the process of suing hundreds of illegal file-sharers across the country with several thousands more suits potentially forthcoming.

In 1999, an eighteen-year old Shaun Fanning launched Napster, an online service that allowed users to copy songs from other users computers for free. The site quickly drew the ire of the music industry, which forced it into bankruptcy and an

eventual shutdown in 2001.

Post-Napster copycats quickly emerged, spawning a renegade revolution in the way people obtained and treated music. Kazaa.com, a Denmark corporation with headquarters in Australia, and incorporated in the South Pacific, leads the pack. The largest downloaded program in history at 230 millions copies worldwide, claims a staggering 2.6 billion files are copied each month. Grokster.com

and Morpheus, the others of the big three in the file-sharing conglomerate, have also come under fire for "encouraging piracy" but are, as of now, still running.

All three sites utilize a form of peer-to-peer file sharing technology (P2P). This allows users to literally "rip" songs stored on another's hard drive in real-time, at sometimes lightning speed.

Currently, there are various types of lawsuits pending or already in the appeals process. In *RIAA v. Verizon*, the court cleared the way for the RIAA to obtain the names and addresses of Verizon's customers via their Internet service protocol (ISP) addresses. *A&M Records v. Napster* found the district court had not abused its discretion in ordering shutdown of the company until filtering procedures could be put in place. *In re Aimster* held an injunction was proper where the defendants failed to take steps to prevent illegal copyright infringement. However, in *MGM v. Grokster*, the court found substantial evi-

dence for non-infringing uses of defendant's software. The court further distinguished the case from Napster's company stating, "the sale of copying equipment, like the sale of other articles of commerce, does not constitute

Many radio stations are being consolidated by major corporations infusing an anything but varied sound. File-sharers argue the Internet creates musical diversity because there is almost no limit to who or what is available.

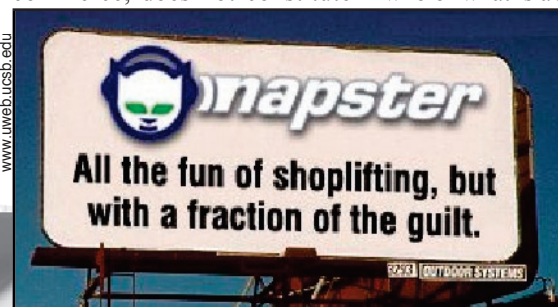
Opponents argue piracy is a direct link to declining record sales. Record sale totals are at the lowest level in a

decade. *The Times* (of London) reports the U.S. has seen a ten percent drop in album sales, while Germany and Spain have seen a nine and 15 percent drop, respectively. All are attributed to file sharing.

Many argue this is a violation of federal law. By downloading music, users are infringing on copyrighted material. Since its inception in 1998, the Digital Millennium Copyright Act (DMCA) has allowed substantial authority of the government to seek out and find file-sharing users because of the copyright infringement.

File sharing seems to be in the eye of the beholder. The *L.A. Times*, in a collage of contributors, illustrates the fact. "To the chief executive...every pirated song means less money...in an independent band, file sharing networks provide far more exposure than traditional outlets...there has to be some kind of alternative that omits the recording labels so [an] artist becomes the salesman for his wares."

For now, many lawsuits are pending with many more expected to come. Napster is re-emerging as non-infringing software. For now, the technology continues to evolve and so do the arguments.



## Accountability drives new SBA fund distribution policy

By Mark Merims

STAFF WRITER

Student organizations at C-M will have to become familiar with a new procedure to receive funds for their organizational events. A portion of each student's tuition goes to a "general fee," of which a percentage is used to fund law school organizations.

The SBA is a conduit between the administration of the university and law students. The SBA receives this money from the university and is responsible for both distributing it to student organizations, and funding other law school functions.

SBA, stressing greater fiscal responsibility, is in the process of overhauling the current system. Previously, the SBA distributed the money on an 'ad hoc' basis. At the beginning of each school year, each organization would submit a request for money for its operating expenses and for

special events it wanted to sponsor.

Once each request was submitted, the SBA verified that the requested money was to be used for events that would benefit the entire student body, not simply for the members of that organization. The SBA would then determine how much of the request the SBA could afford to fund.

However, once the money was granted, there were no checks or balances in place to ensure the money was spent for the proposed purpose. Furthermore, there was little oversight or accountability by either the SBA or the university.

While organizations were required to submit proof of expenses at the end of the year, because of poor record-keeping, in many instances it was impossible, in many instances, to verify such expenses corresponded to acceptable uses.

To remedy the problem, a new fund request procedure is being implemented,

according to Sasha Markovic, SBA president. Expenses to finance an organization's ongoing existence are still granted as a lump sum at the beginning of the year.

However, any student organization requesting money for special events must present a list of estimated expenses for the event prior to receiving any money. Upon completion of the event, receipts of expenditures must be submitted to the SBA for verification. Should the organization not use the entire amount requested, or use the money for inappropriate expenses, future requests are reduced by this amount.

The SBA is hoping this policy will not discourage organizations from planning events to benefit the law school community, but rather will encourage greater fiscal responsibility. Additionally, Markovic says the SBA will continue to assist organizations with fundraising for their discretionary needs.



# Dr. Phil's "Laws of Life"

*Dr. Phil shared his theories on life, relationships and success at the CSU Convocation Center.*

By Amanda Paar

LAYOUT EDITOR

CSU played host to popular TV psychologist, Dr. Phil McGraw spoke about his theories on life, relationships and success Nov. 7 at the Convocation Center as part of his "Get Real" tour.

Dr. Phil earned a doctorate in psychology at the University of North Texas and opened a psychology practice with his father in 1979. However, he was not satisfied being a psychologist and he wanted to use his psychology degree in a different way.

Despite his unhappiness, it took him years to build up the courage to change career paths. He was afraid of disappointing his father and was hesitant to leave the comfortable practice he had become accustomed to and diving into a new job.

After leaving his psychology practice in 1989, Dr. Phil co-founded Courtroom Sciences, Inc. Courtroom Sciences is a company that assists the legal profession by conducting mock trials, behavioral analysis, jury selection and mediation.

It was through this endeavor that Dr. Phil met Oprah Winfrey. Oprah hired Courtroom Sciences to help her defend the suit brought against her by cattlemen who claimed she defamed the beef industry on one of her shows. Dr. Phil and Oprah became close friends. She often invited him to be on her show and later assisted him in obtaining his talk show.

Based on his book published in 2000,

*Life Strategies: Doing What Works, Doing What Matters*, Dr. Phil discussed his "Life Laws." He said these ten concepts should not be anything shocking to people; rather, they are concepts that are so simple they are oftentimes ignored. And ignoring them can cause major consequences, he said.

Dr. Phil said that if a person seriously thinks about his "Life Laws" and then applies the strategies to his own life, he will be a happier person within a month.

Dr. Phil specified a method of reflecting upon the major parts of one's life. First, he said that every person has ten defining moments in their life. These moments change the way the person thinks and affect his outlook on life forever.

Second, Dr. Phil said that every person makes seven critical decisions. These decisions change the person's life in a major way. They reflect an important crossroads and help define one's self.

Finally, Dr. Phil said that there are five pivotal people in every person's life. These people help structure who the individual truly is. Dr. Phil said it is crucial to realize these pivotal people are not all required to impact a person's life in a positive way. He said it is

a very real and likely possibility

that at least one of the five pivotal people is someone who has or had a detrimental effect on the person's life. Nonetheless, he said, the good must come with the bad, and every person must take his negative experiences into account when assessing his life.

Dr. Phil said that if an individual reflects upon this three-tiered model of defining moments, critical choices and pivotal people,

his life can begin to change. He can "begin to see how his choices and the reactions of other have shaped his self concept and caused him to be the person

he is today."

He said the model forces an individual to confront the good with the bad and only then can he reach his "authentic self."

## Life Law #1: You either get it, or you don't

Strategy: Become one of those who gets it.

## Life Law #2: You create your own experience.

Strategy: Acknowledge and accept accountability for your life.

## Life Law #3: People do what works.

Strategy: Identify the payoffs that drive your behavior and that of others.

## Life Law #4: You cannot change what you do not acknowledge.

Strategy: Get real with yourself about your life and everybody in it.

## Life Law #5: Life rewards action.

Strategy: Make careful decisions and then pull the trigger.

## Life Law #6: There is no reality; only perception.

Strategy: Identify the filters through which you view the world.

## Life Law #7: Life is managed; it is not cured.

Strategy: Learn to take charge of your life.

## Life Law #8: We teach people how to treat us.

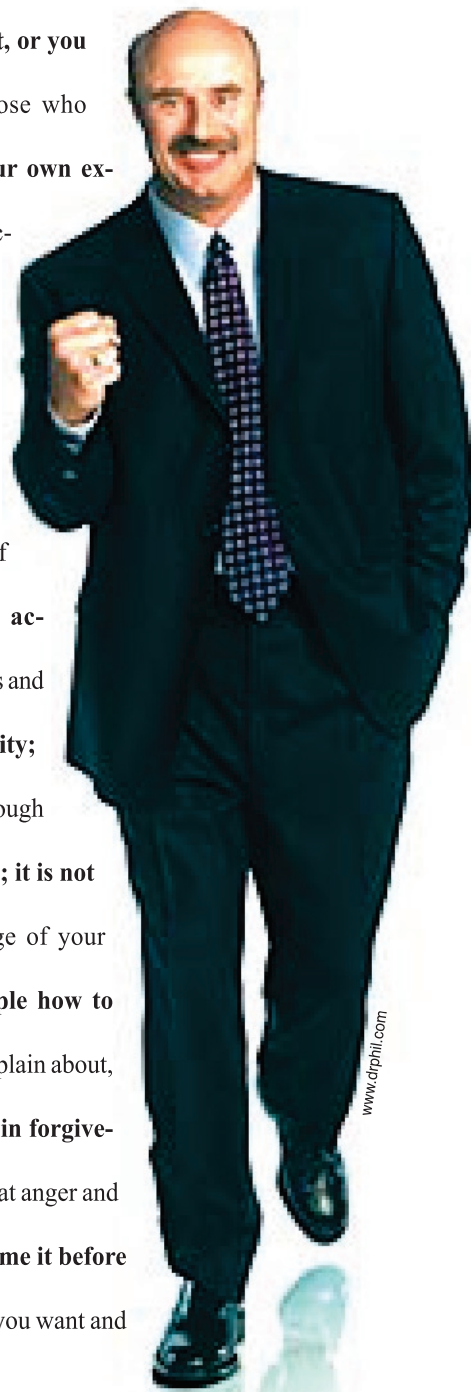
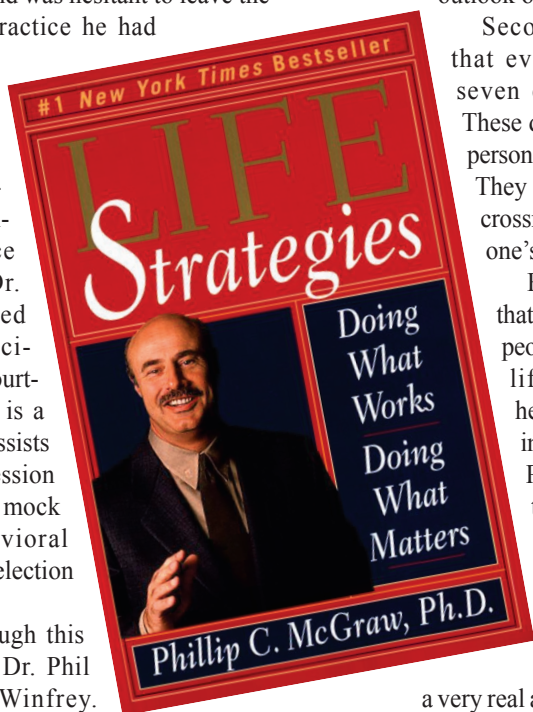
Strategy: Own, rather than complain about, how people treat you.

## Life Law #9: There is power in forgiveness.

Strategy: Open your eyes to what anger and resentment are doing to you.

## Life Law #10: You have to name it before you can claim it.

Strategy: Get clear about what you want and take your turn.



## C-M Moot Courters place second at Regionals, advance to finals in New York

This past weekend in Detroit, Michigan, two teams from C-M competed in the Regional Moot Court Tournament.

The team of Siegmund Fuchs, Brendan Doyle and Dean Williams placed second in the region and will continue to argue in New York at Nationals.

Both teams made the quarter-final rounds. The team of Susan Taylor, Bryan Kostra and Jennifer Seme argued in a difficult bracket and missed the semi-finals by a margin.

### THEFT CONCERNS

There has been evidence recently of attempts to steal technology equipment in classrooms at C-M, as well as CSU as a whole. This activity appears to be occurring either at night or on the weekends.

An e-mail to C-M students encouraged individuals noticing questionable activity are report it to the CSU police. The students, faculty and staff here on the weekends are asked to report any alarms heard in the technology classrooms to the



CSU police department at ext. 2020.

Students in the lounge and moot court/law review suite on the ground floor recently reported an alarm to the authorities and likely prevented a theft.

Stolen classroom technology equipment is a terrible inconvenience to the faculty and students. The technology in the classrooms represent a considerable investment funded by students technology fees and State House Bill funding.

### C-M PROFESSOR IN THE NEWS

Professor and Associate Dean Linda L. Ammons is a world-class photographer. Her photographs have been displayed in shows throughout the country and her work is now on display at CSU's Second Cleveland Juried Biennial Exhibition at the University art gallery until Dec. 13.



Assoc. Dean Linda Ammons



## Notes in Brief

REMINDER TO 1L's Beginning Dec. 1, 1L's are permitted to contact employers regarding employment. This contact is allowed by the AALS (American Association of Law Schools), which creates guidelines for 1L employment, and The National Association for Law Placement (NALP), which creates guidelines for its membership of law schools and employers.

Part-time and first year full-time students may work during the second semester part time, but not more than 20 hours per week.

The C-M Office of Career Planning stresses that it is crucial to not jeopardize your grades in order to get a part-time job the first year.

### NEW BOOK

*Barman: Ping-Pong, Pathos, and Passing the Bar*, by Alex Wellen.

There is a new book on the shelves about the experiences of a law student. *Barman* has been hailed as an honest, revealing and hilarious portrait of a lawyer as a young man. Critics consider the book to be a combination of *The Paper Chase* and *Sex*

and the City.

This book offers advice and consolations for those undergoing the pressures of the law experience including studying for the bar, dealing with your results (good or bad), applying to law firms and making friends and colleagues in the law world.



### RECENT EVENTS

On Wednesday, Nov. 19, Prof. Stephen Werber presented "Tort Reform: State and Federal Constitutional Concerns."

The program bridged the worlds of tort law and constitutional law and focused on various "tort reform" measures that contain provisions substantially limiting the rights of injured persons to bring suit or making even favorable litigation outcomes economically impossible.

Werber's proposal considered pending Ohio Senate Bill 80, likely to be enacted in 2003, which severely limits tort actions of all kinds.





## Making sacrifices: no one can have it all

By Karin Mika

LEGAL WRITING PROFESSOR

**Q:** *Is it realistically possible for a female to have it "all" in a legal career—that is, becoming a partner in a major firm and having a family?*

**A:** Quite frankly, it's not possible for anyone to have it all in any aspect of life. The only people who appear to have it all are only able to do so because of the support staff they may have taking care of domestic matters.

Traditionally, that meant a male having a wife who took care of the children and all of the household matters. Although that

### Legal Writing

line is no longer so firmly drawn, in the majority of cases, it is still the female who subordinates her career for the good of the family. In rare instances, a working couple may have nannies and other domestic help, but that takes some cash and is often emotionally unsatisfactory.

Hillary and Bill Clinton might be the best example of a couple where each seemingly reached a pinnacle of success while part of a family unit (albeit not always a stable one). But if you look at Hillary's background, you will see that she gave up a promising career in Chicago to be with Bill in Arkansas, and then gave up the career she had established in Arkansas to follow Bill to Washington, D.C. It was only when Bill was done achieving all of his goals that she could, more-or-less, pick up where she left off with her career plans.

Unfortunately, until males can have babies, this is probably how things will go in the field of law in the great majority of instances. This is far from a male-bashing statement.... It's just that on numerous occasions, I have seen career-zealous females do an about face on what they consider important after having children, some even leaving the field of law entirely. Maybe it's a hormonal thing?

However, don't think the career-zealous males get an advantage. I would hope that everyone is interested in some quality of life, and often in a dual career family, it is the male who keeps the high stress job while the female moves to the lower stress position after having kids. This is not always the best end of the deal. Bottom line? Life, for everyone, is a series of sacrifices and choices about which goals will be subordinated. No one has it all.

## Juggling work and family

*Adjunct Prof. Peter Traska balances work, family and teaching.*

**D**uring my first year at C-M, I chanced upon Profs. Gorovitz-Robertson and O'Neill at the Barristers' Ball. Prof. Robertson was then my property instructor, and Prof. O'Neill I knew only through his favorable reputation. I supposed I would say something clever:

"Well, if it isn't my favorite prof. And you, too, Prof. Robertson." We all laughed.

Then it occurred to me that they had valuable experience that I wanted to know about. I knew them both to be very accomplished professionals as well as devoted family-types. I asked them how.

They both said it's hard. They said plenty more, and I wish I could remember more of the particulars. I do remember specifically how warmly they spoke of family and work too.

I had all kinds of time for that little chat because I was unaccompanied at that Barristers'. I lamented that I was, who knows how far away from settling down. There was no guarantee that I would ever have the happy dilemma of career and family. Prof. Robertson said, "It can happen fast."

I started my current job on Fri. May 24, 2002. I graduated from law school the following day. On Wed., May 29, my then girlfriend of one year, Michelle, and I learned that we had a baby on the way.

I don't feel it was so much that we made some snappy decisions as that the choices were, for us, obvious. My property professor told me it could happen fast, but nobody ever said anything about five days. Instant life.

We were married on the 22<sup>nd</sup> of June by our friend and 2002 graduate John Rogers, who just got re-elected Mayor of Mentor on the Lake. The whole thing cost about eighty bucks, which we didn't really have.

Alexandra Rose was born in January, and as yet unnamed Baby number two is due this January. If she's a little early, we get a nice tax break, and probably an audit. We're now

figuring out how to get both of us past the bar exam. Now I understand why nations and really big companies make "five year" plans.

Kierkegaard and Jack Palance's character in "City Slickers" seem to have taken different paths to the same theory of happiness. The good life, the big secret, is singular: to will one thing. When you lose sight of your one thing, you get bad results.

As for me and my house, that certainly rings true. Our "one thing" is everything.

Having it all. To have and hold each other and

legal world and the world of small children closer together. The first time I ever heard of the "Tele-tubbies" was on her Property final in the spring of 2000, and her past exams read like *Little Golden Books*. But I don't think it's that she'd rather be writing children's literature.

People who are called to the learned professions and to family life shoulder a load like Atlas's, but with two worlds to keep up. So of course professional moms and dads would look to reduce those two worlds into one at every opportunity just to ease the load, right?

But, I remember an old joke: a mother of one says to a mother of ten, "I don't think I could divide my love ten ways." The mother of ten says, "You don't divide it, you multiply it." It's not about reducing anything, it's about integrating everything.

It turns out that there are no two separate worlds of work and career.

It's just one world, with diapers, deadlines, sleepless nights and chubby cheeks all woven together.

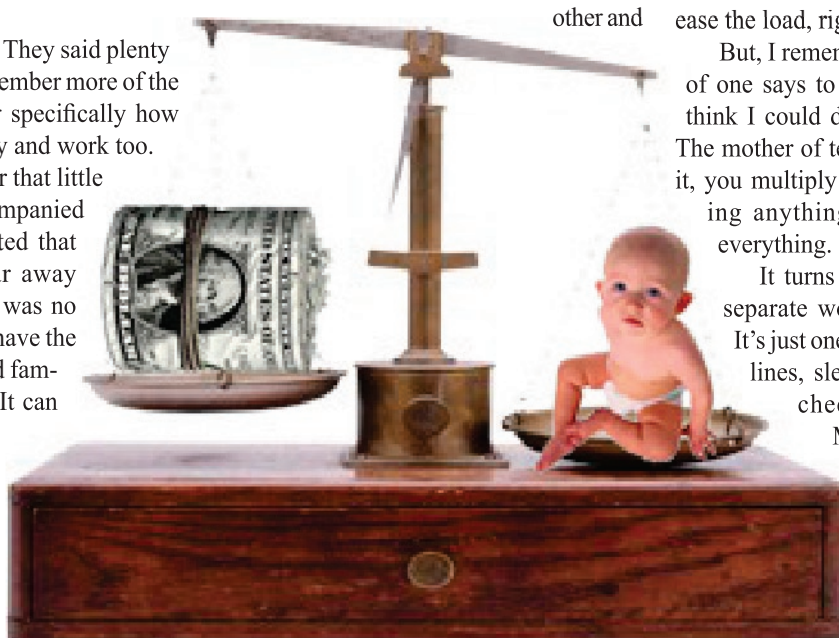
Most of us can't help loving the family part, and probably a lot of us find it easy to love the legal profession too. The mother of ten knows the secret to doing both. You don't divide

up your love, you multiply it.

I asked my wife's feedback, and she adds:

*This was written by Peter Traska who is a big doodoo head who can't seem to find the time to pick up a telephone to call his wife to find out what the game plan is for the evening with regards to dinner and their 10-month-old daughter.*

*If he keeps it up for too much longer he won't have to worry about juggling work and home responsibilities. He'll be back living in a small efficiency with a smelly cat, eating ramen noodles and popcorn for dinner.*



### By Peter Traska '02

babies simply because nothing else in the world is as Godly. Also, for each of us to chase down professional ambitions is like settling grudges carrying over from previous lives. And when it seems that these two great purposes are working against each other, that's when all I can do is remember the advice of the sages. It's hard. Things don't get done as designed, but they do get done.

Anyone who has ever taken an exam of Professor Robertson's has gotten the idea that she takes every opportunity to bring the

## RESULTS: Breaking down and analyzing C-M's Bar passage rate

Continued from page 1--

time students who cannot devote sufficient time to studying for the bar should consider not taking the exam until they can adequately prepare. Also, Dougherty said students whose jobs do not require bar passage should consider not taking the exam.

Another area of concern is the bar exam passage rate of students with low law school GPA's. Guttenberg summed up the problem stating, "do well in law school and you will do well on the exam."

During the past seven years, students with a GPA. over 3.0 have a bar passage rate of 90.9 percent. However, during the same time period, students with a GPA below 3.0 have a bar passage rate of 48.3

percent. Guttenberg said the real concern lies with students who fall in the bottom quarter of their class. Over the past seven years, these students pass the bar exam at a rate of 30 percent.

Guttenberg said the administration has considered many options to try to improve the passage

rates for students in the bottom of their class. One such option is to require students falling within the bottom quarter of their class to take some sort of bar review course.

However, the American Bar Association does not allow law schools to require bar review courses for graduation or offer

bar review courses for credit. Therefore, any offered program must be voluntary. "Such [voluntary] programs do not often help those whom they are designed to help; rather, usually the best students attend the voluntary programs," said Guttenberg.

Prof. Patricia Falk is the chair of the faculty committee responsible for bringing proposals on improving C-M's bar passage rate to the faculty. A possible proposal may include encouraging closed-book exams.

Clare Taft, '03, agrees that closed-book exams may be beneficial to students. Taft, successful in passing the July 2003 bar exam, said, "I was definitely more prepared and was more successful on the bar exam topics that coincided with my closed-book exams at C-M. The bar exam is closed book, so it just makes sense to have closed book exams in law school, especially for the bar exam subjects."



Jason Smith-Gavel



# M.P.R.E., a wolf in sheep's clothing

By Stephen Bittance

GAVEL COLUMNIST

On Nov. 7, I took the Multistate Professional Responsibility Exam for the first and, hopefully, only time. Yet, I am not confident that I passed the test and would not be surprised if I have to retake the test in March. I have asked many of my friends who took the test, and they all agree it was challenging. This is surprising when the common rumor is that the test is easy.

Before taking the exam, I had heard from both students and faculty that the test is easy. After experiencing the test, these people are either very smart or just confused. It is my guess that people are more honest about the difficulty of a test just after it is over and before they find out the results. Once someone has passed the test and time has faded their memory are they more likely to say the test was easy. While this may explain why students say the test is easy, I cannot think of any reason why a faculty member would tell a student the same; it is just irresponsible.

To prepare for the test, I took legal profession, attended the Bar-Bri review session, reviewed the Bar-Bri outline, completed 375 sample problems and studied the rules. Each source, however, has some deficiencies. I did well in the legal profession course, but it focused on the rules that govern lawyers and did not cover the Code of Judicial Conduct, which is on the test. The Bar-Bri review session was very superficial and merely served as a refresher course. The Bar-Bri outline was helpful and provided a source to help work out the sample problems that I did not answer correctly. While this seemed like an appropriate amount of preparation, there were at least fifteen questions on the test that I had to guess the answer after narrowing down to two possible choices.

The test has 50 questions and lasts for two hours and five minutes. It is a multiple-choice test that is offered three times per year. A typical question has a two to three paragraph fact pattern followed by four possible answers. In Ohio, a passing score is eighty-five, which is not a percentage, but an adjusted score based on the performance of all test takers. The National Conference of Bar Examiners administers the test and additional information on the test can be found at [www.ncbex.org](http://www.ncbex.org).

Information is also available at Bar Exam Resource Guide on C-M's website located at [http://www.law.csuohio.edu/lawlibrary/bar\\_exam\\_intro.html](http://www.law.csuohio.edu/lawlibrary/bar_exam_intro.html).

In 2002, sixty-five percent of all test takers from Ohio passed the MPRE, with 76 percent of first-time takers passing the test. This is not a pass rate that supports a claim that this is an easy test. If anyone tells you otherwise, do not believe them. If someone asks you about the test, tell them the truth, that it is challenging.

# Workplace values need reworking

Americans are overworked; Prof. Hoke suggests legal intervention

Continued from page 1--  
from paid overtime and can be required to work upwards of sixty hours per week. Hoke argues that overtime compensation should affect all employees equally, which would level the playing field for all workers.

Second, Hoke argues for an amendment of the Family and Medical Leave Act. Hailed as an important victory for labor reform advocates in the U.S., Hoke criticizes the Act for its almost exclusive effect on the wealthier class. As she sees it, the Act's extension of unpaid leave is a benefit only to those who have the reserved income necessary to take advantage of it.

Hoke also offers affirmative suggestions for ways in which Americans can change their working conditions. She advocates mandatory, paid maternity leave for both parents.

Not only would this

affirm the value that mothers and fathers are equally valuable to a child's life, but it would even the playing field for men and women by making female workers less of a "liability" and pregnancy itself less of a work anomaly.

Hoke also argues we need to encourage employers to change expectations of jobs. She suggests strategies such as job and office-sharing, as well as the availability of part-time employment without the increasingly disproportionate pay cuts that typically accompany reductions in hours.

She suggests that the U.S. government should offer attractive tax incentives and other benefits to encourage companies to adopt progressive employment practices.

On a macroscopic level, Hoke sees the need for the U.S. to become involved in global labor reform. Individually, she suggests concerned constituents employ the avenues traditionally available to proponents of democratic reform, including writing letters and attending meetings with representatives.

On the most basic level, however, she suggests we collectively

take stock of the costs and benefits of our individual lifestyles.

For many of us, the simplest way to address the tension we are currently facing between family and work involves achieving the perspective necessary to differentiate between our wants and our needs.

While it is true that the single paycheck faces obstacles that did not previously exist in meeting the growing needs of today's family, our ability to limit the extent to which we feel compelled to "keep up with the Jones's" should not be underestimated.

The extent to which we can curb our seemingly insatiable appetites for the latest gadgets and trends is the extent

to which we can make ourselves less vulnerable to the system, as it currently exists.

Although Hoke is optimistic about the ability of Americans to reform the workplace in which we will find ourselves as we leave law school behind, the details of the transition she envisions seem hard to grasp.

At the very least, it seems safe to say that no changes will be made until more American workers stand up and say they will not tolerate this quality of life; or at the very least, begin to question that quality itself.



## LAWSUIT: Problems persist with PeopleSoft product

Continued from page 1--  
lion in non-tuition accounts receivable.

Initially, when CSU decided to purchase PeopleSoft software in 1996, the university estimated the product and installation would cost \$4.2 million. By the end of 2000, CSU had spent over \$16 million. Most of the money was used to remedy the many glitches with PeopleSoft programs.

Nevertheless, Mike Droney, CSU vice president of information services and technology, said the university has invested an estimated \$5.7 million into PeopleSoft's latest program called PeopleSoft 8. When asked about the previous problems with the software company, Droney said, "for five semesters, now, not including the summer semester, the program has been running well."

Droney indicated that selection of software companies was limited because PeopleSoft and SCT Banner, a software company based in Pennsylvania, are the only companies that design software suited for higher educational institutions. As a result, CSU had few options to change, and do business with, another software company. Cuyahoga Community College, Kent State University, Yale University and other schools use SCT Banner's software.

Bill Wilson, CSU director of information services and technology, agrees the new software will enhance the current system. According to a proposal released by Wilson's office, the new upgrade will allow the user to interface with the PeopleSoft application entirely through a web browser.

According to the same report released by the department of information services and technology, entitled "PeopleSoft 8 Project Authorization," the upgrade to PeopleSoft 8 was driven by the product support policies of PeopleSoft, which states that technical

support for the software will cease as of August of 2003.

In 2002, when CSU demanded a plan to solve the university's financial aid computer software problems, PeopleSoft estimated the so-called "action plan" would cost \$2.6 million. This was after CSU had threatened to file a lawsuit against the company.

CSU, apparently still experiencing the financial effects of the PeopleSoft problems, filed a lawsuit in Cuyahoga County Common Pleas Court in May of 2002 against Kaludis Consulting Group. Kaludis, based in Washing-

The docket of the case reveals that the motion to amend the complaint was filed in August of 2003. The document also stated that the case management conference is set for Dec. 2, 2003.

When asked about the pending suit against PeopleSoft, CSU's President Michael Schwartz deferred to Nancy Cribbs, CSU legal counsel. Cribbs said, "CSU has no complaint currently pending against PeopleSoft."

Major problems with PeopleSoft software have occurred throughout the country.

In 1999, the Chronicle of Higher Education reported that The Ohio State University, The University of Michigan, Northwestern University and four other Big Ten universities encountered so many problems with PeopleSoft programs that school officials wrote a joint letter to the software company demanding improvements. In 2000, the University of Minnesota reported that the bugs in

the PeopleSoft software caused students to be overcharged for tuition and substantially increased the original cost of \$42 million for the system to \$60 million. Ohio State spent \$30 million more than it originally intended for installing PeopleSoft's HR and payroll systems.

PeopleSoft continues to maintain a substantial client base that includes DePaul University, University of Louisville, Verizon Communications and many other schools and businesses.

Kaludis also, in spite of the firm's alleged inadequacies, has a client list that includes George Washington University, University of Chicago, Florida State University, Miami University of Ohio and other public and private universities.



By the end of 2000,  
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ton D.C., was hired by former CSU president Claire Van Ummersen to oversee the implementation of the PeopleSoft software. The consulting firm had no experience installing PeopleSoft systems, but the *Plain Dealer* reported that Van Ummersen had worked with Kaludis in the past.

In the suit, CSU alleges Kaludis recommended that CSU purchase the software from PeopleSoft even though the consulting firm knew that PeopleSoft had no prior experience with higher education software. Mike Staib, an attorney at Hahn, Loeser & Parks LLP representing Kaludis, said Kaludis filed a third party complaint against PeopleSoft. Staib also said, "CSU filed a motion for leave to amend its complaint to assert a claim against PeopleSoft."





# “Movin’ on up”...out of tier four

Although the *U.S. News and World Report's* annual law school rankings are inherently flawed, C-M should realize that these rankings affect the school. With this fact in mind, there are several ways C-M could take advantage of the flawed system.

The annual rankings are based on several “measures of quality,” including a quality assessment, selectivity, placement success and faculty resources. These measures are added together to give the overall ranking, and tier level, of each law school. Historically, C-M has been ranked as a Tier III school; however, last spring fell to Tier IV, the bottom level.

By just looking at the different criteria, the ranking system itself is seriously flawed. Within the overall category of placement success, bar passage rate comprises only two percent of the overall ranking. Is this justified? What better way to determine what law schools do the best at preparing their students than to look at if they are able to pass the bar. Although C-M would probably not benefit if bar passage rate were given more weight, it does make sense to place a higher priority on such a statistic.

On the other end of the spectrum, the quality assessment comprises 40 percent of the overall rankings. This highly subjective element consists of: (1) the dean and three faculty members from each law school ranking every other law school (25 percent of the overall rankings) and (2) lawyers and judges ranking law schools (15 percent of the overall rankings).

This section of the rankings has drawn the most criticism from law school administrators. What does a law professor at a small law school in California know about the quality of education one receives at C-M? The answer is simple...no one knows everything about every law school in the country. Therefore, the survey invites individuals to trash other law schools in the survey in order to better their own school's

reputation.

A better way to determine this section of the rankings would be to conduct surveys within the school's geographical region. Sending out surveys to deans, professors, lawyers and judges in the Great Lakes region would be a better measure of C-M's quality than how the current survey is conducted.

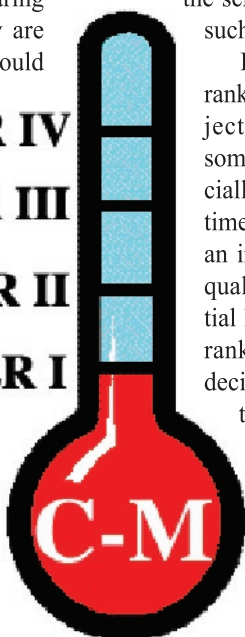
One would venture to guess that C-M's reputation and quality of education is highly regarded among individuals who actually know about the school. Evidence of this high regard could be seen last spring when every federal judge in Ohio supported the school when rumors of its closing surfaced. Also, although Case Western Reserve University is a Tier II law school, many former law students of the university have been heard questioning whether it was worth going to the school at the cost of having such high student loan debts.

However, although the rankings are flawed and subjective, they still do mean something. Law firms, especially in these hard economic times, look to the rankings as an indicator of an applicant's quality. Furthermore, potential law students look to these rankings when they have to decide what law school to attend. When given a choice, would you rather attend a school that is considered a Tier IV school over a Tier III or even Tier II school? As a result, it seems that once a school gets stuck at the bottom on the rankings, it would be almost impossible to move up to a higher tier.

In order not to get relegated to the bottom tier forever, C-M should consider making some changes in order to take advantage of the current rankings. Some options may be considered drastic, while others may be considered obvious.

The easiest way for C-M to gather a

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higher ranking would be to increase their selectivity component of the rankings. This component consists of proportion of applicants accepted, median LSAT scores and median undergraduate GPA.

By accepting a lower percentage of applicants, this measure of quality would directly increase. This could be done by merely taking advantage of the current system. Currently, C-M does not accept on-line applications. Most other schools, including Akron and Case, accept such applications and even waive the application fee in an application is made online. If C-M would offer such a convenience, applications would surely increase. Why wouldn't a student apply to C-M, even if they may not otherwise, if applying is convenient and, better yet, free?

C-M could also take advantage of the rankings by manipulating the LSAT and GPA component of the selectivity measure. These rankings are only taken into account for full-time students. If C-M required students in the bottom quarter of their entering class to enroll part time, C-M's overall statistics would be better. This may also be better for the students themselves. Although it may take longer

to graduate from law school, the caseload would be less and the “marginal” students may be better able to flourish.

In a more radical change, C-M could significantly reduce the size of incoming classes. This change would not only directly influence the selectivity component of the rankings, but would also affect several other components. Even if this meant increasing the tuition for the remaining students, the ends may justify the means. By accepting fewer students, it would follow that the quality of students would be better. This would lead to higher bar passage rates, which would lead to better jobs upon graduation, which would lead to a better overall reputation for C-M.

## Blame on night students for low bar passage unappreciated

By Jay Crook

STAFF WRITER

Recently, the professors of night classes were required to give a little “talk” regarding the bar passage rate at C-M. C-M's performance, in comparison to the other law schools in the state, tends to remain firmly entrenched near the bottom of the standings. This was one of the reasons cited in the ill conceived budget cutting proposal to eliminate funding for C-M that floated around the Ohio legislature last year before dying on the vine, thanks in no small part to the work of our current administration.

Also to their credit, the administration set out to study the hows and whys of our bar passage rate. Here is where the salutary remarks end. Having completed the first round of research, the administration recently briefed the student body. Based on the tenor and tone of the talks given in my classes, the view of the administration is clear and can be summed up in one

single sentence. “It's all your fault, night students.”

That's right, it's my fault, and if you go to school at night, it's your fault too. The statistics don't lie, we have a lower percentage pass rate than the day students. Don't try to deny it night students, our bar passage rate is dragging the rest of the school down. The focus on night students is particularly interesting, since there are other glaring issues to consider, like the monumental discrepancy in the passage rates of students above and below the 3.0 GPA cutoff.

Even more confusing is the advice that was given. This advice ranged from the obvious “you need to ensure you have time to prepare for the exam,” to the insulting “you could just not take the bar exam if you don't need it to get a job,” to the absurd “you could ask Dean Steinglass to call your employers to explain that you need time off.”

Something is wrong here. First, the largest discrepancy is between those above and

below a 3.0. What is the school doing to help those students have a better shot at passing the bar? Second, why the emphasis on the night students. The gap isn't that large; the statistics are incomplete. What percentage of night students are below the magic 3.0? What is being done to help them?

The selection of emphasis seems misled. Is the schools solution to this problem to blame the night students? Is this emphasis the opening salvo in a bid to eliminate the night program?

Bar passage is an important indicator, if for nothing else than for its effect on the “unofficial” law school rankings, which DO play a part in the employment seeking process, no matter what other rhetoric you may be told. The night students aren't your problem, or your solution. Don't shortchange yourselves, or your students. Do your homework, develop a complete vision and attack the problem, not your students.

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# Seeking fictitious remedies

*Pain and suffering, stemming from life at C-M, sparks student's mock suit*

By Josh Dolesh

GAVEL COLUMNIST

One of the main goals of law school is to teach the up and coming lawyer who to sue and why. Well, maybe C-M is doing their job too well. What follows is a prayer for \$500,000 for various claims related to my experience at law school.

As they all stem from the same transaction, occurrence or set of circumstances (i.e. my experiences at C-M), I believe they are compulsory claims and I must bring them all for fear that I may waive my right to bring these claims at a later date.

Please note: this article is for educational purposes only. If you too are planning on bringing suit, I highly recommend you consult a licensed, practicing attorney.

The list of lawsuits follows:

Breach of contract suit for every time I have been short-changed by the vending machines for those cups of coffee dubbed "extreme" light roast; so light in fact, that I could not even see it.

Personal injury suit for every time I have hit my knee on the under structure of those wonderful tables in Room 244. Hopefully, all the classrooms will soon switch over to this style of table. This



way, we could fold them up at night and host a homeless shelter. Oops, I forgot, the library already does this.

Included in this action is a personal injury claim for hearing loss and hypothermia caused by the turbine air-conditioning unit in that same room.

An antitrust action for half the expenses of my textbooks as inspired by the *Plain Dealer* article claiming textbooks overseas cost half as much as in the U.S. I also plan on pursuing a conspiracy claim against the authors of these books.

\$100,000 breach of contract suit for C-M's failure to pay my modeling contract. Several weeks ago I was approached by C-M and asked to participate in a photo shoot for the annual report. I asked if I needed my speedos and

they said no, so I did not bother to contact my agent. In retrospect, this was a big mistake. Writeout might seem high, but the fair market value for a supermodel's time is quite pricey.

As for damages in these suits I am seeking \$100,000 for pain and suffering. After all, isn't law school the embodiment of pain and suffering? I also seek \$100,000 for loss of enjoyment of life. This is probably even more obvious than pain and suffering.

In the same light, if I had any children they would be seeking a loss of consortium claim. So for now, I guess my parents should bring a loss of filial consortium claim.

And while I am at it, I might as well bring a wrongful death action on behalf of my social life (but I feel this would be a bit frivolous).

Maybe my dog can sue for loss of consortium.

I also plan to seek several equitable remedies:

A quiet title action to lay claim to my law school exams. Just whose "property" are they anyway?

A preliminary injunction to bar professors from using the Socratic method. Yes, the damage is immediate, and yes, it is irreparable.

I also seek a permanent injunction against the computer lab on a nuisance theory. That smell definitely has interfered with my quiet enjoyment of the lab. What is that smell anyways?

I am sure that as my law school career progresses I will find more of my rights violated, but I am willing to forgo these suits for a settlement right now. I am open to one lump sum payment, say, \$500,000.

I have heard that the General Fee has some extra cash lying around. Maybe if it is just given to me, there will not be any arguments on how to use it. The school can kill two birds with one stone.

# Stereotypes surface in 1L class

*The following is the third in a six-part series following a first-year C-M student from orientation to spring exams.*

I'd like to take this time to address some of the stereotypes of 1L's that have crossed my path at C-M this fall:

**The Pseudo-Intellectual:** The pseudo-intellectual has but one purpose: to make his classmates and the professors think he is intelligent. They do the reading and conceive some baseless question to ask the professor every class period. Peoples' eyes roll, and the pseudo intellectual only grows more clueless by the day. I know you're trying to make partner and everything, but your emptiness is plaguing the classroom. You're a fake, and pretty soon everyone else will realize it.

**The Quiet Killer:** Since there are 70-plus 1L's in some of my classes, a few students are sure to slip through the cracks of my generalizations. But, the Quiet Killer is preparing to make a name for him or herself. He studies and comprehends but remains silent come class time. When exams are passed out in December, he will remain as calm as ever and will ace every one of them. Good luck to you Quiet Killer, I know you're out there.

**The People of the Laptop Persuasion:** I'm not wealthy enough to own a laptop computer, so maybe it's jealousy that grabbed

my attention. I said it and feel better now. Since most students have one, there are a few problems I must address regarding some of the users. I actually saw someone playing Solitaire in class this morning. I asked myself, people are still playing solitaire? Next was a person checking out Louis Vuitton handbags, which are ridiculously expensive. This person is more concerned with what they're going to be able to buy after law school than actually finishing law school. Good luck with the handbags and your life in the Hamptons. I wish I had a laptop.

**The Undergrad Cool Guy:** This nearly-extinct creature roams our halls looking for a good time. His plan is to just keep showing up to class and hope that everything works out. Whether it does or not, don't worry: you really were cool in undergrad. The Undergrad Cool Guy certainly is better than High School Cool Guy who didn't even have the grades to get into C-M. Ain't no party like a law school, because a law school party don't quit... too bad you'll be gone before Martin Luther King Day.

**The Derrière Smoochers:** These teacher's pets realize that they're only a number. Their insistence to constantly remind the professor of their mere existence is beginning to annoy me. Yes, teachers appreciate participation but ingeniune butt-kissing is not

what anyone desires. Are you that concerned that your exam grades won't be good enough?

**The Baby Boomers:** The 30 and over crowd deserve some recognition. Our elders hold an amazing advantage over the young adults. They realize how good they have it, and they're here to take full advantage of the law school experience. Some of us recent college grads don't have the perspective necessary to succeed in this new, challenging academic environment.

The Baby Boomers are here to win, they've worked for years and now they have a chance to better their lives. Nobody, not even C-M's faculty, is going to stop them.

God bless the Boomers, the only 1L's who see things clearly.



# Open Mike 2L sounds off on recent events

By Michael Luby

STAFF WRITER

Without making this into a political diatribe, we're gonna bob left and weave right this month. First, we all want to be lawyers. Start acting like them. ROCK THE VOTE! I haven't seen so many people pissed off in years over the ballot issues this month. A year from now is Bush II: The Republicans Strike Back. They don't want the four-year curse to continue. Check out CNN.com for regularly updated presidential info. Don't trust a corporate giant? Surf the Internet. Its time to start taking notice of what's going on around us. But with that said...

...Nah nah nah! Nah nah nah! Hey ehheh good...oh wait excuse me. Merely entertaining myself at what could be the best non-presidential election in years. Bye bye Madeline Cain. It was fun while it lasted. I think you have done enough

damage to my city for a while. Go terrorizing *Rover's Morning Glory* without the word Mayor in front of your name.

On another important note, we can only hope the Dade-County seniors won't be helping out with the Issue 47 recount. I think we got it right the first time guys. Let's make sure we do it again.

Democratic presidential hopeful Howard Dean has opted out of the federal campaign-financing scheme. The first Democrat to pull the stunt claims he is being forced to after President Bush announced he will do the same. The move allows candidates to exceed the \$45 million dollar financing cap. I wondered what the Iraqi financing bill was paying for.

The U.S. baseball team has failed to make the 2004 Olympics. The team, comprised of near major leaguers and top prospects, will be unable to defend the gold medal it held in the Sydney Games. America...even cheating we still can't get the win. Go figure.

In a cost-driven society to keep companies afloat, drastic ideas tend to appear. General Electric Commercial Finance has invited many firms to compete in a bidding war to take on many of its needed tasks. Apparently, GE feels all lawyers are created equal. If only it were that simple.

Several women are fighting an Egyptian ban preventing foreign belly dancers from performing inside the country. Many have cried blasphemy, claiming the country is home to the belly dance. Whatever happened to exotic dancers?

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